

Kentucky's Beneficiary Mitigation Plan

KENYA STUMP AND LONA BREWER

KENTUCKY OFFICE OF ENERGY POLICY

JUNE 25, 2020



Agenda for Today

Funding Purpose & Scope

Kentucky's Beneficiary Mitigation plan

Accessing Kentucky's Environmental Mitigation Funding Allocation

Issues Moving Forward



Environmental Mitigation Trust

(Appendix D of the Settlement)

\$2.7 Billion nationwide to remediate excess NOX emissions
(Environmental Mitigation Trust) (Appendix D).

Intended to fully mitigate excess NOx emissions from 2 liter and 3 liter engines.

These are the funds states have been provided to expend.

Kentucky's portion of the Trust is \$20,378,649

Kentucky received legislative authorization to expend the funds during the 2020 legislative session.



Environmental Mitigation Trust

Important Dates

December 2016 – The Governor designated EEC as the lead agency on behalf of the Commonwealth.

March 2017 – The Court designated Wilmington Trust as the national trustee of the Environmental Mitigation Trust. Kentucky is officially listed as a beneficiary.

October 2, 2017 – Trust Fund Effective Date (TED) – **(This started the 10 year clock to expend the funds).**

- Currently in year 3 of the 10 year cycle to expend the funds.
- Beneficiaries must submit the final Beneficiary Mitigation Plan at least 30 days prior to requesting to draw down the Trust funds.



Settlement Agreement

From the National Trustee (Wilmington Trust),

“This is not a grant program but is a Trust Agreement.”



Kentucky's Overall Goal for Funding

To reduce overall NOx emissions in the State;

To maximize the potential beneficial impacts of Eligible Mitigation Actions on *air quality in areas that bear a disproportionate share of the air pollution burden* within its jurisdiction; and

To implement Eligible Mitigation Actions by working with entities that have administrative and programmatic structures in place to *leverage and implement diesel emissions reduction projects*.



Air Quality Non-attainment Areas in Kentucky

County	Standard	Nonattainment	Classification	Population Affected
Boone County	8-Hour Ozone (2015)	Yes	Marginal	113,158
Bullitt County	8-Hour Ozone (2015)	Yes	Marginal	74,319
Campbell County	8-Hour Ozone (2015)	Yes	Marginal	82,634
Jefferson County	8-Hour Ozone (2015)	Yes	Marginal	741,096
Kenton County	8-Hour Ozone (2015)	Yes	Marginal	152,176
Oldham County	8-Hour Ozone (2015)	Yes	Marginal	60,316

For the Louisville Metro area the affected population is 875,731.

For the Northern Kentucky area the affected population is 347,968.

https://www3.epa.gov/airquality/greenbook/anayo_ky.html



Kentucky Ozone and PM2.5 Nonattainment and Maintenance Area Designations

County	Ozone		PM2.5	
	Nonattainment	Maintenance	Nonattainment	Maintenance
Boone	X			X
Boyd		X		X
Bullitt	X			X
Campbell	X			X
Christian		X		
Daviess		X		
Edmonson		X		
Fayette		X		
Greenup		X		
Hancock		X		
Jefferson	X			X
Kenton	X			X
Lawrence				X
Livingston		X		
Marshall		X		
Oldham	X			
Scott		X		



Kentucky's Beneficiary Mitigation Plan

Categories of Eligible Mitigation Actions	% of Funds Allocated	\$\$ Amount
Administrative Expenses	1.4%	\$278,500
Eligible Large Trucks	0%	
Buses		
Eligible Transit Buses (government entities only)	41.8%	\$8,521,700
Eligible school buses	41.8%	\$8,521,700
Freight Switchers	0%	
Ferries/Tugs	0%	
Ocean Going Vessel Shorepower	0%	
Eligible Medium Trucks	0%	
Airport Ground Support Equipment	0	
Forklifts & Port Cargo Handling Equipment	0%	
Light Duty Zero Emission Vehicle Supply Equipment (Government & Non-government)	Up to 15%	\$3,056,700
Diesel Emission Reduction Act (DERA) Option	0%	
Total	100%	\$20,378,600



Important Definitions

“Class 4-8 School Bus, Shuttle Bus, or Transit Bus (Buses)” shall mean vehicles with a Gross Vehicle Weight Rating (GVWR) **greater than 14,001 lbs. used for transporting people**. See definition for School Bus below.

“School Bus” shall mean **a Class 4-8 bus sold or introduced** into interstate commerce for purposes that include carrying students to and from school or related events. May be Type A-D.

“Scrapped” shall mean to render inoperable and available for recycle, and, at a minimum, to specifically cut a 3-inch hole in the engine block for all engines. If any Eligible Vehicle will be replaced as part of an Eligible project, Scrapped shall also include the disabling of the chassis by cutting the vehicle’s frame rails completely in half.

“Zero Emission Vehicle (ZEV)” shall mean a vehicle that produces no emissions from the onboard source of power (e.g., All-Electric or hydrogen fuel cell vehicles).



Funding Stipulations

These funds are for diesel vehicle replacements to mitigate excess NOx emissions – **not to provide additional vehicles**

Vehicles being replaced must be **“SCRAPPED.”**

Appendix D2 to the Consent Decree defines “Scrapped to mean:

*“...to render inoperable and available for recycle, and, **at a minimum, to specifically cut a 3-inch hole in the engine block for all engines... disabling of the chassis by cutting the vehicle’s frame rail completely in half....**”*



Project Stipulations

There are 10 categories of eligible mitigation actions in Appendix D2 of the Settlement.

For most categories – an eligible project would replace a vehicle with a cleaner like vehicle, or repower an existing engine with a new clean diesel or alternative fueled engine – **typically 2009 and older vehicles.**

Note: Repower was not authorized by the legislative language and eligible vehicle model years were modified for school buses



2020 Legislative Session: HB 352

SCHOOL BUS FUNDING

\$8,521,700 shall be used to reimburse local school districts **for 50 percent** of the purchase cost to **replace up to five school buses** per district **currently in daily use** meeting the necessary criteria with a **chassis year of 2001 or earlier.**

If these funds are insufficient to cover 50 percent of the purchase costs of districts that have requested 5 reimbursement by June 1, 2021, the reimbursement shall be pro rata reduced.



Appendix D-2

Eligible Buses ~~may be Repowered with any new diesel or Alternate Fueled or All-Electric engine,~~ or may be replaced with any new diesel or Alternate Fueled or All-Electric vehicle, **with the engine model year in which the Eligible Bus Mitigation Action occurs or one engine model year prior....**

Eligible Buses must be **Scrapped**.



Appendix D-2: For Government Owned Eligible Buses, and Privately Owned School Buses Under Contract with a Public School District, Beneficiaries may draw funds from the Trust in the amount of:

- ~~1. Up to 100% of the cost of a Repower with a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) engine, including the costs of installation of such engine.~~
2. Up to 100% of the cost of a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) vehicle.
 - *Up to 50% of the cost for school buses per BMP and legislative authorization*
- ~~3. Up to 100% of the cost of a Repower with a new All Electric engine, including the costs of installation of such engine, and charging infrastructure associated with the new All Electric engine.~~
4. Up to 100% of the cost of a new All-Electric vehicle, including charging infrastructure associated with the new All-Electric vehicle.
 - *Up to 50% of the cost for school buses per BMP and legislative authorization*



2020 Legislative Session: HB 352

TRANSIT FUNDING

\$8,521,700 shall be transferred to the Office of Transportation Delivery to replace public transit buses meeting the necessary criteria. Priority shall be given to maximizing Federal Transit Grants;



Appendix D-2

Eligible Buses include **2009 engine model year or older** class 4-8 school buses, shuttle buses, or transit buses.....

Eligible Buses ~~may be Repowered with any new diesel or Alternate Fueled or All Electric engine,~~ or may be replaced with any new diesel or Alternate Fueled or All-Electric vehicle, **with the engine model year in which the Eligible Bus Mitigation Action occurs or one engine model year prior.**

Eligible Buses must be **Scrapped.**



Appendix D-2: For Government Owned Eligible Buses, and Privately Owned School Buses Under Contract with a Public School District, Beneficiaries may draw funds from the Trust in the amount of:

1. ~~Up to 100% of the cost of a Repower with a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) engine, including the costs of installation of such engine.~~
2. Up to 100% of the cost of a new diesel or Alternate Fueled (e.g., CNG, propane, Hybrid) vehicle.
 - *Up to 80% of the cost for transit buses per BMP*
3. ~~Up to 100% of the cost of a Repower with a new All Electric engine, including the costs of installation of such engine, and charging infrastructure associated with the new All Electric engine.~~
4. Up to 100% of the cost of a new All-Electric vehicle, including charging infrastructure associated with the new All-Electric vehicle.
 - *Up to 80% of the cost for transit buses per BMP*



2020 Legislative Session: HB 352

LIGHT DUTY ZERO EMISSION VEHICLE SUPPLY EQUIPMENT FUNDING

\$3,056,700 shall be used for the purchase of light-duty, zero-emission vehicle supply equipment meeting the necessary criteria. Recipients shall provide at least **50 percent of matching funds per project**;

EEC Note: Legal interpretation of “matching funds” allows for in-kind contributions



Appendix D-2

Trust Funds **shall not be made available or used to purchase or rent** real estate, other capital costs (e.g., construction of buildings, parking facilities, etc.) or general maintenance (i.e., maintenance other than of the Supply Equipment).

Light duty electric vehicle supply equipment includes Level 1, Level 2 or fast charging equipment (or analogous successor technologies) that is **located in a public place, workplace, or multi-unit dwelling** and is not consumer light duty electric vehicle supply equipment (i.e., not located at a private residential dwelling that is not a multi-unit dwelling).

Light duty hydrogen fuel cell vehicle supply equipment includes hydrogen dispensing equipment capable of dispensing hydrogen at a pressure of 70 megapascals (MPa) (or analogous successor technologies) that is **located in a public place**.



Appendix D-2

Up to ~~100% of the cost~~* to purchase, install and maintain eligible light duty electric vehicle supply equipment that will be available to the **public at a Government Owned Property**.

Up to ~~80% of the cost~~* to purchase, install and maintain eligible light duty electric vehicle supply equipment that will be available to **the public at a Non-Government Owned Property**.

Up to ~~60% of the cost~~* to purchase, install and maintain eligible light duty electric vehicle supply equipment that is available at a **workplace but not to the general public**.

Up to ~~60% of the cost~~* to purchase, install and maintain eligible light duty electric vehicle supply equipment that is available at a **multi-unit dwelling but not to the general public**.

Up to 33% of the cost to purchase, install and maintain eligible light duty hydrogen fuel cell vehicle supply equipment capable of dispensing at least 250 kg/day that will be **available to the public**.

Up to 25% of the cost to purchase, install and maintain eligible light duty hydrogen fuel cell vehicle supply equipment capable of dispensing at least 100 kg/day that will be **available to the public**.

***NOTE: Recipients shall provide at least 50 percent of matching funds per project per legislative authorization**



2020 Legislative Session: HB 352

\$278,500 may be used for administrative costs.

Notwithstanding Part III, 2. of this Act, unexpended Restricted Funds appropriated 14 in this subsection shall become available for expenditure in the 2020-2022 biennium



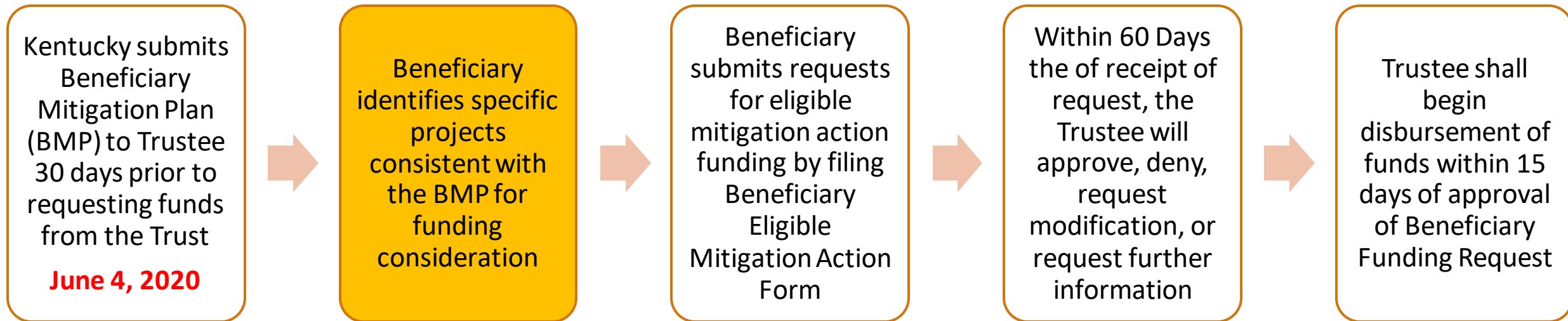
Administrative Costs

Beneficiary is responsible for:

- Ensuring all projects that receive funding from the trusts **comply with the eligibility requirements specified in the Trust Agreements** as well as the reporting requirements.
- Maintaining and **making publicly available all documentation submitted in support of funding requests and the Beneficiary Mitigation Plan**
- **Semiannual reporting** describing the progress implementing each Eligible Mitigation Action during the six-month period leading up to the reporting date



Process for Accessing Kentucky's VW Trust Allocation



The Trustee may only disburse funds for Eligible Mitigation Actions, and for the Eligible Mitigation Action Administrative Expenditures specified in Appendix D-2 and in a Beneficiary's Mitigation Plan.



Beneficiary Funding Request Requirements

Once a BMP is submitted, each request for funding from the Trustee must include:

- Certification that the funding request fits into the Beneficiary Mitigation Plan;
- Detailed description for proposed Eligible Mitigation Action (community and air quality benefits);
- Estimate of the NOx reductions anticipated as a result of the proposed Eligible Mitigation Action;
- Project management plan for the proposed Eligible Mitigation Action (budget and expenditure timeline);
- Certification that all vendors were or will be selected in accordance with state public contracting laws;
- Detailed description of how the Beneficiary will oversee the proposed Eligible Mitigation Action (review, auditing, compliance procedures) and commitment by the Beneficiary to maintain and make publicly available all documentation;
- Description of any cost share requirements;
- If applicable, a description of how the Eligible Mitigation Action mitigates the impacts of NOx emissions on communities that have historically borne a disproportionate share of the adverse impacts of such emissions;
- A detailed plan for reporting on Eligible Mitigation Action implementation.



Final Disposition of Trust Funds

Beneficiaries have up to 10 years to expend allocations (October 1, 2027)

National Trustee is required to file with the Court and U.S. EPA an accounting of all Trust Assets remaining that have not been expended or obligated on approved Eligible Mitigation Actions.

Beneficiaries may seek to supplement their allocation by filing with the courts and delivering to the Trustee written reports demonstrating that original funds have been expended/obligated (80%) and requesting a portion of any other remaining funds.

Any additional funds awarded will sunset at the end of 5 years after award and those funds will be deemed to have been donated to fund federal agency projects to reduce NOx emissions.



Current Actions Taken by EEC

Updating Administrative and Contact forms with the Trustee

Notifying the appropriate federal agencies per 4.2.8 of the Trust Agreement

Working with Kentucky Transportation Cabinet on establishing a process for transit bus funding.

Working with Kentucky Department of Education on establishing an application process for school districts.

Accepting public comment on Light Duty Zero Emission Vehicle Supply Equipment to help establish a record for targeting funding and establishing a process.



What you can do?

Submit comments by July 10 on Light Duty Vehicle Supply Equipment.

<https://eec.ky.gov/Pages/Volkswagen-Settlement.aspx>

For school districts:

- Identify school buses for replacement (VINs)
- Identify if you are in a non-attainment area, maintenance areas or an area that was previously designated as non-attainment.
- Becomes familiar with the Diesel Emission Quantifier and start preparing information for your application. <https://cfpub.epa.gov/quantifier/index.cfm?action=main.home>
- Begin working on a budget and expenditure timeline
- Start developing school bus replacement project schedule

For Transit Agencies, notify KYTC if you have projects identified for funding.



Next Steps

Review public comments and Identify focus areas along with process for funding Light Duty ZEV Supply Equipment projects.

Release application process for Kentucky School districts sometime after August 1, 2020.

Review transit projects submitted by KYTC for eligibility for funding and begin gathering information for the request for funding submittal to the Trustee.



APPENDIX

ADDITIONAL INFORMATION



Environmental Mitigation Trust Agreement for State Beneficiaries

<https://www.epa.gov/sites/production/files/2017-10/documents/statebeneficiaries.pdf>

